

AO 120 (Rev. 2/99)

TO:  <b>Commissioner of Patents</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Colorado on the following **Patents**

DOCKET NO. <b>10-cv-03064-WYD-KMT</b>	DATE FILED <b>12/16/10</b>	U.S. DISTRICT COURT <b>FOR THE DISTRICT OF COLORADO</b>
PLAINTIFF <b>JAMES A. JABLONSKI</b>		DEFENDANT <b>ENERGIZER HOLDINGS, INC.</b>
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 <b>5,060,377</b>		<b>Please see copy of Complaint attached hereto</b>
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT  <div style="text-align: center; font-size: 1.2em;"> <i>4/25/11 Stipulation of Dismissal</i> </div>
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CLERK  <b>GREGORY C. LANGHAM</b>	(BY) DEPUTY CLERK <i>Loelle Etzelle</i>	DATE <b>5/10/11</b>
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

JAMES A JABLONSKI,

vs.

Plaintiff / Relator,

Case No.

JURY TRIAL DEMANDED

ENERGIZER HOLDINGS, INC.,  
a corporation

Defendant.

**COMPLAINT**

Plaintiff/Relator, James A Jablonski, states as follows for his Complaint against Defendant, Energizer Holdings, Inc.:

1. This is a *qui tam* action for false patent marking under 35 U.S.C. §292.
2. As set forth in detail below, Defendant has violated 35 U.S.C. §292(a) by marking articles with U.S. Patent No. 5,060,377 which is expired, for the purpose of deceiving its competitors and the public into believing that such articles are covered by the falsely marked patents.

**PARTIES, JURISDICTION, AND VENUE**

3. Jablonski is and was at all material times an individual residing at 465 Lafayette Street Denver Colorado 80218.

4. Defendant, Energizer Holdings, Inc., is and was at all material times a corporation organized and existing under the laws of the State of Missouri, having its principal place of business located at 553 Maryville University Drive, St. Louis, MO 63141.

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§1331 and 1338(a).

6. This Court has jurisdiction over Defendant because Defendant has sold its products, including its falsely marked products, in Colorado. Such sales are substantial, continuous, and systematic.

7. Venue is proper in this District under 28 U.S.C. §§1391(b) and (c) and 1395(a), because, on information and belief, Defendant has sold a substantial number of its products which are the subject matter of this Complaint to consumers in Colorado.

#### **THE 5,060,377 PATENT**

8. U.S. Patent No. 5,060,377 (the '377 Patent"), entitled Shaver Head with Flow Passages, was filed on August 15, 1990 and issued on October 29, 1991.

9. The '377 Patent expired no later than August 16, 2010.

#### **THE DEFENDANT**

10. Defendant makes, sells, or has made and/or sold, a variety of products for sale to distributors, retailers, and the general consuming public, including a variety of shaving products, which Defendant marks with patent numbers.

11. Defendant is a sophisticated business entity and is the holder of a large number of patents.

12. On information and belief, Defendant monitors its own patents and those of other companies through both in-house and outside counsel.

13. Defendant has been a party to several federal cases involving patents and or alleged patent infringement, including at least five cases in which it has been alleged that Defendant falsely marked its products with expired patent numbers in violation of 35 U.S.C.

§292, including 10-cv-290 ND Alabama; 10-cv- 892 SD Illinois; 10-cv-00096 EDTexas; 10-cv-02994 ND California; 10-cv-96 Ed Texas; and 10-cv-00274 ED Texas.

14. These suits were pending as early as February 19, 2010 ,prior to the offering for sale of products marked with the 5,060,377 Patent as alleged below. Defendant has had more than ample opportunity to review and modify packaging of its products which contain expired patents during the ten months since it was sued but has not done so at least with the Quattro products. .

15. Defendant makes and sells Schick Quattro Titanium Coated Blades, (hereinafter referred to as the "Blades").

16. Certain packages of the Blades are falsely marked; they are marked and sold as follows: "Covered by one or more U.S. Patent Nos.," followed in each case by a series of patent numbers, including in many cases the '377 Patent.

17. Defendant's falsely marked Blades are being sold retail in 2010 with the above described false markings, after the expiration of the Expired Patents, including because the package contains ©2010 the year during which the '377 Patent expired.

18. Jablonski purchased Schick Quattro Titanium Coated Blades at the Safeway market located at 6<sup>th</sup> and Corona Streets in Denver, Colorado on December 7, 2010, and observed the product being offered for sale on several occasions in November and December 2010, at Safeway and other Denver area locations, all of which were marked with the 5,060,377 Patent Number.

19. Defendant has made many decisions to mark its Blades with the Expired Patents after the expiration of those patents, including each time it has printed or otherwise created the above-described packaging and placed the packaging in commerce.

20. Defendant knows or reasonably should have known that the purpose of marking

a product with a patent number is to put competitors and the public at large on notice of exclusive and legally enforceable rights with respect to the marked product.

21. Defendant did not have, and could not have had, a reasonable belief that its products were properly marked with the '377 Patent.

22. Defendant has marked and continues to mark its Blades with the Expired Patents for the purpose of deceiving the public into believing that Defendant's products are covered by the Expired Patents.

23. Each false marking on Defendant's Blades is likely to discourage or deter persons and companies from making or selling similar or competing products.

24. By falsely marking its Blades with the Expired Patents, Defendant has benefitted commercially and financially.

25. By marking and continuing to mark its Blades with the Expired Patents, Defendant has injured the sovereign interests of the United States, as well as the public interest, and has discouraged, or is likely to discourage, competition and innovation in competing products.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff/Relator, James A Jablonski prays that this Court enter judgment in its favor and against Defendant as follows:

A. Entering an injunction prohibiting Defendant and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from further violation 35 U.S.C. §292.

B. Ordering Defendant to pay a civil monetary fine of \$500 per false marking offense, one-half of which shall be paid to the United States;

C. Ordering Defendant to provide an accounting for any falsely marked products and/or packages not presented at trial and a monetary award set by the Court for such falsely marked articles;

D. Ordering Defendant to pay all costs of this actions, including attorneys' fees and interest; and

E. Granting Plaintiff/Relator such other and further relief as the Court deems just and proper.

Dated this 16<sup>th</sup> day of December, 2010.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL ON ALL ISSUES

Respectfully submitted,

LAW OFFICE OF JAMES A JABLONSKI

s/ James A. Jablonski, Esq.  
James A. Jablonski, Esq., No. 7289  
1801 Broadway Ste 1100  
Denver, CO 80202  
Attorneys for Plaintiffs

*Original Signature on file at Law Office of James A Jablonski*

Plaintiff's Address  
465 Lafayette Street  
Denver, CO 80218



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

JAMES A JABLONSKI,  
Plaintiff / Relator,

v.

Case No.10-cv-03064 LTB-KMT

ENERGIZER HOLDINGS, INC.,  
a corporation

Defendant.

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**STIPULATION OF DISMISSAL WITH PREJUDICE**

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Pursuant to Fed. R. Civ. P. 41(a)(1)(i), Plaintiff/Relator James A. Jablonski ("Jablonski") and Defendant Energizer Holdings, Inc. ("Energizer") hereby stipulate to dismiss the above-captioned action, with prejudice, with all rights of appeal waived, and with each party bearing its own costs.

Respectfully submitted,



Plaintiff/Relator James A. Jablonski

Defendant Energizer Holdings, Inc.

By its Attorneys:

James A. Jablonski

Maia H. Harris

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DATED: April 25, 2011